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September 11, 1986

Ellen C. Teplitzky, Esq.
Office of Regional Counsel
United States Environmental
Protection Agency
Region III
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Philadelphia, Pennsylvania 19107

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EPA, REGION III
OFFICE OF REGIONAL COUNSEL

Re: Army Creek Site

Dear Ms. Teplitzky:

Following the meeting at your office on August 27, we commenced an investigation to determine whether General Motors had been properly designated as a potentially responsible party by EPA at the Army Creek site (otherwise known as Llangollen or Black Cat). Our investigation centered on the discovery taken in the Tybouts Corner litigation since you had informed me that the designation of GM as a potentially responsible party at Army Creek was premised on evidence discovered at Tybouts.

We have found nothing credible in the Tybouts record -- or, for that matter, in any other source -- to suggest that General Motors generated hazardous substances that were disposed of at Army Creek. The only suggestion in the Tybout's record that GM's wastes were hauled to Llangollen is the comment of a county employee, Charles E. Wheeler, to that effect in his August 19, 1986 deposition. Yet his statement is not sufficient to make GM a potentially responsible party at Army Creek for three reasons. First, his statement is based on hearsay and would not be admissible. Second, he is evidently confusing activities at Llangollen with events that occurred many years later and at another landfill, Pigeon Point, at which he also worked.

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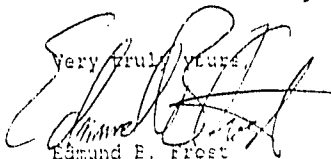
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Finally, and most significantly, his statement is contradicted by more credible testimony. The deposition of Edgar T. Harvey, Jr., taken August 8, 1984 is clear that no GM waste went to Army Creek. Mr. Harvey, who was the operator of Army Creek from November 1, 1960 until 1963 or 64 (p.64), stated that during that time the site was used exclusively for garbage and that liquids were not dumped at the site. (p.140) Moreover, he testified that the County did not allow the dumping of drums at this site. (p.141) Mr. Harvey also hauled for GM during the period Army Creek was in operation, but he stated that he never used the site for the dumping of industrial wastes. (p.66) This testimony was confirmed by his son who stated that the Harveys hauled only residential and light commercial trash to Army Creek. (5/14/86 Dep. of E. Thomas Harvey, III at 34)

To the extent that the naming of GM as a FRF at Army Creek is predicated upon GM's status as a third-party defendant in Tybouts, we know of no admissible evidence in that litigation which establishes GM as a generator of any hazardous wastes at that site. Rather, the consistent testimony of the hauler of GM's wastes demonstrates that GM's wastes were not taken to that site. (5/28/86 Dep. of Edgar T. Harvey, Jr., at 21, 146, 160-1; 5/14/86 Dep. of E. Thomas Harvey, III at 34, 86-7; 8/8/84 Dep. of Edgar T. Harvey, Jr. at 61, 143, 145)

In short, we know of no credible evidence, direct or by parity with practices at Tybouts Corners, that would demonstrate that wastes from GM were disposed of at Army Creek. As a result, we are puzzled that GM was named as a FRF at this site. As we have previously requested, if you have any specific information or evidence that, in your view, establishes GM as a FRF, we would appreciate being provided with it. In this regard, you are no doubt aware that EPA's Settlement Policy provides for the release of information on the "volume and nature of wastes to the extent identified as sent to the site" and any "ranking of by volume of materials sent to the site." 50 Fed. Reg. 5037 (Feb. 5, 1985). In the absence of such information, we do not believe that GM was properly named as among the potentially responsible parties at this site and urge you to reconsider your position.

Very truly yours,



Edmund E. Frost

EEF/hmg

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